

# HERKER INDUSTRIES, INC. COMMERCIAL PRODUCT AGREEMENT

HERKER INDUSTRIES, INC. ("Seller"), a corporation and the Customer shown on the Job Confirmation, agree as follows:

- SUBJECT OF AGREEMENT.** Customer shall purchase from Seller and Seller shall produce Customer's requirements for production of the commercial product(s) identified on the Job Confirmation.
- ACCEPTANCE AND GOVERNING PROVISIONS.** The proposal to which this Agreement is attached is an offer by Seller to sell the goods and/or services described therein or in the attachments hereto subject to these terms and conditions, and subject to Seller's credit approval of Customer, and is expressly subject to acceptance of the terms and conditions herein by Customer. Customer shall be deemed to have accepted the terms of this Commercial Product Agreement unless Customer provides Seller written notice of objection to its contents within 10 days after receiving, by delivery, facsimile, United States mail or otherwise, a copy of this Commercial Product Agreement. No modification, change, renunciation or waiver by Seller of any term or condition hereof or of any of Seller's rights or remedies hereunder shall be binding on Seller nor shall the order hereby acknowledged by countermanded or changed by Customer, unless in each instance Seller shall in advance thereof have expressly consented thereto in writing by Seller's authorized officer, and any purported oral or other consent thereto shall be null and void; there being no representations, agreements, promises or understandings between Customer and Seller that are not expressed herein. Seller's failure to object to provisions contained in any purchase order or other communication from Customer shall not be construed as a waiver of these terms and conditions nor an acceptance of any such provisions. Estimated prices are only for work according to the original specifications. Seller reserves the right to check all design specifications, before acceptance of the work.
- CANCELLATION AND RETURNS.** Verbal or written orders confirmed by Job Confirmation cannot be cancelled or altered by Customer except upon terms acceptable to Seller, as evidenced by written consent signed by Seller's authorized officer. Customer shall compensate Seller against loss incurred by Seller with respect to a cancelled or altered order, including but not limited to costs for raw materials, tooling, engineering, handling, overhead and production. No goods may be returned to Seller for credit except with Seller's prior written permission, and then only in compliance with Seller's return shipment instructions. In the event of any cancellation by Seller, Seller shall not be liable to Customer for any damages, whether compensatory, consequential or otherwise, provided that Seller shall be obligated to Customer for reasonable out of pocket costs actually incurred in reliance on Seller's Job Confirmation prior to cancellation.
- ALTERATIONS.** Alterations represent work performed in addition to the original specifications. Such additional work shall be charged at current rates and shall be supported with documentation upon request.
- QUANTITY VARIATION.** Unless otherwise noted in the Job Confirmation, variations in quantity of 5% over and 5% under quantities ordered shall constitute acceptable delivery, and the excess or deficiency shall be charged or credited at the rate stated in the price schedule.
- INSURANCE.** Customer assumes all risks with respect to, and will carry adequate insurance on, all property furnished and/or owned by Customer while in storage on Seller's premises either before or after the manufacturing process or while in transit to or from Seller's premises. Seller insures Customer's materials during the manufacturing process; Seller's liability for such materials will not exceed the amount actually recovered under Seller's insurance policies.
- DELIVERY.** Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. local Customer's place of business or F.O.B. Seller's platform for out-of-town customers. Proposals are based on continuous and uninterrupted delivery of complete order, unless specifications distinctly state otherwise. Charges related to delivery from Customer to Seller, or from Customer's supplier to Seller, are not included in any quotations unless specified. Special priority pickup or delivery service will be provided at current rates upon Customer's request. Materials delivered from Customer or its suppliers are verified with delivery ticket as to cartons, packages or items shown only. The accuracy of quantities indicated on such tickets cannot be verified and Seller cannot accept liability for shortage based on supplier's tickets. In the event of unavailability or delay or interruption of transportation by the usual common carriers used by Seller (including the U.S. Postal Service) the time of such unavailability, delay or interruption of such transportation shall be excluded in computing the time of shipment. All claims for damage in transit shall be made to the carrier and not to Seller. Claims for shortages or other errors in delivery must be made within ten (10) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Customer. Prices indicated are for net quantities only and do not reflect any provisions for overruns.
- TERMS; SECURITY.** Unless otherwise provided in writing, the invoice amount will be due thirty (30) days from the date of shipment. Interest on past due accounts shall be due from Customer at the lesser of 18% per annum or the maximum contract rate permitted by law. If, during the period of performance of an order, the financial condition of the Customer does not justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract. As security for payment of any sum due or to become due hereunder or under terms of any Agreement, Seller shall have the right, if necessary, to retain possession of and Customer grants Seller a lien on all Customer property in Seller's possession including work in process and finished work. Customer hereby agrees to execute such Security Agreements and Financing Statements as Seller may reasonably request. The extension of credit or the acceptance of notes, trade acceptances or guarantees of payment shall not affect such security interest and lien.
- WARRANTIES AND REMEDY.** Seller warrants that the goods and/or services furnished hereunder will conform to the specific description thereof in Seller's proposal or in this Agreement and will be free from defects in materials and workmanship. Claims for defects, damages or non-conformance must be made by the Customer in writing within a period of five (5) days after delivery of the goods or performance of the services by Seller to Customer. Failure of the Customer to make such claim within that 5-day period shall constitute irrevocable acceptance and an acknowledgement by Customer that the goods and/or services fully comply with the terms, conditions and specifications of this Agreement. Any goods and/or services proved to Seller's satisfaction to be defective or nonconforming within the 5-day period shall be replaced or reworked by Seller at Seller's expense. *SELLER'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO SUCH REPLACEMENT OR REWORK, OR TO THE REFUND BY SELLER TO CUSTOMER OF ANY MONIES PAID BY CUSTOMER TO SELLER.*
- DISCLAIMER OF IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.** SELLER AND CUSTOMER AGREE THAT THE FOREGOING WARRANTIES IN SECTION 15 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES SELLER HEREBY DISCLAIMS. Seller shall not be subject to any other obligations or liabilities whatsoever with respect to the goods and/or services furnished hereunder, or any undertakings, act or omissions relating thereto.
- NO CONSEQUENTIAL DAMAGES.** SELLER SHALL NOT BE LIABLE TO CUSTOMER OR TO ANYONE CLAIMING UNDER CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS INCURRED BY CUSTOMER OR BY ANYONE CLAIMING UNDER CUSTOMER.
- INDEMNIFICATION.** Customer will indemnify and hold harmless the Seller from and against any and all losses, costs, expenses (including reasonable and necessary attorney's fees) and damages incurred by Seller on account of any claims, demands, actions or proceedings that may be instituted against Seller on grounds alleging that the goods and related services provided by Seller to Customer pursuant to this Agreement violate or infringe any patents, copyrights, trademarks or any proprietary rights of any person, or that they violate any laws, governmental regulations or directives. The Customer agrees, at the Customer's own expense, to promptly and vigorously defend any such claim, demand, action or proceeding that may be brought against Seller, provided that Seller shall promptly notify the Customer with respect thereto, and provided further that Seller will give to the Customer such reasonable time as the exigencies of the situation may permit in which to undertake the defense and that Seller will reasonably cooperate with Customer in the defense.
- COLLECTION COSTS.** Customer agrees to reimburse Seller for Seller's reasonable and necessary attorney's fees, interest and other reasonable and necessary costs incurred by Seller in collecting any sums owned by Customer to Seller in connection with any order under this agreement.
- TITLE AND RISK OF LOSS.** Title and risk of loss of finished and semi-finished work shall pass to the Customer upon the earliest of Seller's (i) mailing of invoices for finished work, or (ii) delivery to the carrier, or (iii) delivery into storage, regardless of whether the transport medium or storage facilities are owned and/or operated by Seller and regardless of whether Seller charges customer for storage; provided, however, with respect to finished work shipped on "F.O.B. Destination Point" basis, as evidenced by explicit reference to those words in the Job Confirmation, title and risk of loss shall pass to Customer upon Seller's tender of delivery to Customer at the designated destination point(s). The risk of loss for property furnished and/or owned by Customer shall be on Customer while such property is on Seller's premises either before or after the manufacturing process and while in transit to or from Seller's premises. Seller shall bear the risk of loss during the manufacturing process subject to the limitations and exclusions of its all-risk insurance coverage therefor.
- SELLER'S RIGHTS UPON CUSTOMER'S DEFAULT.** If during the term of this Agreement any amount due Seller from Customer under this or any other agreement shall remain unpaid at due date, or if Customer defaults in the performance of any covenant or condition of this Agreement, Seller shall have the right to terminate this Agreement, to declare immediately due and payable all obligations of the Customer for the work theretofore furnished by Seller under this Agreement, to retain possession of any work or materials (including but not limited to work-in-process and undelivered work) owned by Customer or furnished by or on behalf of Customer, to change credit terms with respect to any further work furnished by Seller, and to suspend or discontinue any further work until overdue amounts are paid in full and cash or security satisfactory to Seller covering further work, as may be required by Seller, is deposited in advance with Seller. The foregoing rights of Seller shall be in addition to and not in substitution for any other rights of Seller, and suspension or discontinuance of work by Seller pursuant to this section shall not in any way prejudice any claim or right of action which Seller may have by reason of any breach of this Agreement by Customer.
- MANUFACTURING TOLERANCES.** In the absence of customer specifications defining their requirements, the following conditions of manufacturing generally apply:

Decimal	Diameters + or - .003"	Angles: + or - 2-1/2 degrees	Unspecified		
Dimensions:	Lengths + or - .015"		Finishes:	Not to exceed 250 micro-inches (Ra, AA or RMS).	
Fractional	Diameters + or - .005"	Intersecting	Fillets .020" Max.	Thread	The inspection gages will conform to the limits specified
Dimensions:	Lengths + or - 1/64"	Surfaces:	Corners .020" Max. Radius or Chamfer	Gages:	in the latest applicable ANSI Standard.
- TOOLS, DIES.** Tools, dies, gages, fixtures are an integral part of the manufacturing process and included in engineering charges. As a proprietary item, payment by the Customer, whether separately quoted or not, conveys neither ownership nor the right of removal from the Seller's plant.
- PURCHASE ORDERS.** This Agreement is the entire Agreement between the Customer and Seller, and the Customer acknowledges that this is the operating document even though, for the sake of convenience, Customer's purchase order is issued. Seller shall not be bound by terms on Customer's standard purchase order unless this Agreement is specifically modified in a writing signed by Seller's authorized officer.
- GOVERNING LAW.** The Laws of the State of Wisconsin will govern the rights and liabilities of Seller and Customer under this Agreement.
- FINAL WRITTEN EXPRESSION.** THIS AGREEMENT, ALONG WITH ANY JOB CONFIRMATION ACCOMPANYING THIS AGREEMENT, CONSTITUTES A FINAL WRITTEN EXPRESSION OF ALL TERMS OF THE AGREEMENT FOR SELLER TO PROVIDE GOODS AND/OR SERVICES TO CUSTOMER AS DESCRIBED IN THE JOB CONFIRMATION AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THESE TERMS AND SUCH AGREEMENT. ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN SELLER AND CUSTOMER NOT CONTAINED IN THIS AGREEMENT OR ON THE ACCOMPANYING JOB CONFIRMATION HAVE NO FORCE OR EFFECT, AND ANY AND ALL PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS BY CUSTOMER THAT CONFLICT WITH THIS AGREEMENT OR THE ACCOMPANYING JOB CONFIRMATION SHALL HAVE NO EFFECT. IF THE TERMS OF THIS AGREEMENT CONFLICT WITH THE TERMS OF THE ACCOMPANYING JOB CONFIRMATION, THIS AGREEMENT SHALL CONTROL.